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IN THE

# Supreme Court of the United States

OCTOBER TERM 1930.

No. 402.

THOMAS M. WAMPLER, *Appellant*,

vs.

EDWIN LEE LECOMPTE, FREDERICK S. BARBER, *Appellees*.

**Appeal from the Court of Appeals of Maryland.**

## BRIEF FOR APPELLANT

and

## BRIEF IN OPPOSITION TO MOTION TO DISMISS OR AFFIRM.

THOMAS MORRIS WAMPLER,
*In Propria Persona.*

PRESS OF BYRON S. ADAMS, WASHINGTON, D. C.

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### STATEMENT OF CASE.

This appeal is from a judgment of the Court of Appeals of Maryland affirming a decree of the lower court dismissing the appellant's Bill in Equity.

The sole question presented for the consideration and determination of this Honorable Court is the validity of

Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game.

The appellant filed his Bill against Edwin Lee LeCompte and Frederick S. Barber, (they happened to be the State Game Warden and Deputy Game Warden of Maryland, respectively) but were sued as individuals. (R. p. 1.)

The Bill prayed an injunction against the Appellees to prevent them from molesting or interferring with the erection, maintenance and lawful use of a ducking blind, located and to be located, in the waters of the Potomac River in Maryland, in front of the property of appellant. The Bill alleges the due issuance on June 3rd, 1929, of a license to appellant, as provided by law, to set, erect and maintain a stationary booby, brush or stake blind in the Potomac River, for the purpose of hunting wild water fowl; the erection of such a blind in accordance with law, on the 4th day of October, 1929; and that the appellees on or about the 11th day of October, 1929, unlawfully destroyed said blind, and that the appellees threatened to prevent the appellant from again lawfully erecting said blind, and have threatened to destroy and to continue to destroy the said blind, whenever the appellant tries to again erect the same, and also to prevent the use thereof. (R. p. 2.)

The appellees in their answer to the Bill seek to justify their action under and by virtue of Sections 40, 41 and 46 of the Statute hereafter referred to and set forth. (Appendix, pp. 14-16.)

The case was heard on Bill and Answer. (R. pp. 1-4.)

The appellant's blind was erected prior to October 10th; it was within 250 yards of the dividing line between his and adjoining property, and was less than 500 yards from the nearest blind. (R. p. 2.)

The trial Court dismissed the appellant's Bill, which directly attacked the constitutionality of the above sections of the Statute, holding them to be valid. (R. p.

13.) The Court of Appeals of Maryland affirmed the decision of the lower court, which decision is not officially reported but is found in 150 Atl. 455.

## ERROR ASSIGNED.

It is submitted the Court of Appeals of Maryland erred in holding constitutional Secs. 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland, Title, Water Fowl, Birds and Game.

## OPINIONS OF COURTS BELOW.

The opinion of the Circuit Court for Charles County, Maryland, is found on page 8 of the Record.

The opinion of the Court of Appeals of Maryland, which is not officially reported is to be found on page 18 of the Record and also in 150 Atl. Rep. 455.

## ARGUMENT.

The sections of the Statute herein assailed as unconstitutional, are Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland set out in full in the appendix, pages 14-16.

> Sec. 40. Provides that owners of riparian rights shall be first entitled to make a choice of position of the blind in front of their property; (subject to the limitations of Sections 41 and 46.)
>
> Sec. 41. Limits distance of blind from shore to 300 yards, and distance between blinds 500 yards.
>
> Sec. 46. Limits blinds to within 250 yards of the dividing line of adjoining owner, *"unless with the consent of the adjoining land owner."*

These sections of the Statute are arbitrary, discriminatory, deny equal protection of the laws, and amount to class legislation.

States may unquestionably regulate the taking of game

subject to the limitation, that when the state undertakes to regulate, it must not establish classifications among its citizens, or property owners, which are arbitrary and discriminatory, and which classifications do not reasonably conserve the object which the Legislature had in view.

## OBJECT AND PURPOSE OF STATUTE.

The Court of Appeals of Maryland, in its decision, states the objects which the Legislature had in view in the enactment of the Statute to be, "*the conservation of wild fowl and the protection of those hunting or shooting them.*" (R. p. 24.)

If this be the object the Legislature had in view in the enactment of the legislation herein challenged, then such legislation is void, because if *the provision with respect to the 250-yard limit from a neighbor's land was placed in the statute for the purpose of conservation of game, then that is inconsistent with the provision giving the adjoining land-owner the right to waive the same; if the 250-yard limit was placed in the statute for the protection of human life and property then it is inconsistent with the provision giving an adjoining land-owner the right to waive it.*

*Therefore, it becomes manifest that the Legislature has definitely determined that the 250-yard limit has absolutely nothing to do either with the conservation of game or the protection of life or property.*

It follows, therefore, that the 250-yard limit is an arbitrary provision for the benefit of the large river front land-owner and a denial of equal privileges to the small river front land-owner.

The lower Court states the objects which the Legislature had in view in the enactment of the statute, to be

> "the conservation of wild fowl and the protection of those hunting or shooting them." (R. p. 24.)

*If the 250-yard limit was inserted in the statute for the above purpose what reason can be advanced for the right given an adjoining land-owner to waive the same unless it be that the provision was inserted for the benefit of the rich to the detriment of the poor; for the benefit of the large land-owner to the detriment of the citizen who is not so fortunate.*

The State is unquestionably the trustee for all its citizens, in the enjoyment of the right to take migratory waterfowl, but can it, in deference to the common right of its people, legislate, as it has attempted to do in paragraph (a) of Section 46, *and delegate to adjoining owners of shore-front property the right to waive the requirement to erect blinds within 250 yards of neighbors' projected lines?* If it has such right, several friendly owners, whose individual shore frontages are too short to admit of the erection of a blind, by combining, can enjoy such privileges, while an owner, who is unfortunate enough to have neighbors who will not co-operate with him, for no good reason at all, can be precluded from the enjoyment of such privileges, thus thwarting the very purposes of the Legislature, expressed in the language:

> "* * * same being for the purpose of allowing each land-owner bordering on any of the waters of the State permission to avail himself of the privilege of setting, erecting or maintaining a booby, brush or stake blind in front of his property."

Again paragraph (a) of Section 46, creates arbitrary classes, for under its provisions owners of shore-front property on the tributaries in Charles County are exempted from the provision that their blinds shall be 250 yards from their neighbors' projected lines, while similar owners in the tributaries of the Potomac, in Prince George's County (notably Broad Creek) and in St. Mary's County, must observe such provision.

The center of Wicomico River, for some distance from

its mouth, is the dividing line between Charles and St. Mary's Counties. So that the game laws permit the owners of shore front on the western bank of that river to erect duck blinds within 250 yards of their neighbors' lines, while owners of shore-front property on the eastern bank must keep their blinds 250 yards from the projected lines of their neighbors.

**The lower court says in its opinion, upholding the validity of the Statute, that its purpose is the conservation of wild fowl, and protection of those hunting them (R. p. 24), nevertheless this same Statute gives an adjoining land owner the right to brush aside and set at naught a legislative enactment, enacted for the protection of human life.**

### A. Protection of Human Life.

To give an adjoining land owner the right to waive, to set aside a legislative enactment, enacted for the protection of human life, is inconsistent with the announced purpose of the legislation, and is entirely consistent with the claim here asserted that it is class legislation and discriminatory.

**It delegates to a land owner the right to strike down a barrier erected by the Legislature, for the protection of human life, in order to accommodate his friend, in shooting ducks, regardless of human life.**

If the provisions of the Statute requiring duck blinds to be within 250 yards from an adjoining land owner, are for the protection of human life, then this is not a requirement having a fair and substantial relation to the object sought to be accomplished by the Legislature: it is not a requirement germane to the legitimate object of the legislation, because the right to waive, and strike down, and disregard such legislation, enacted for the protection of human life, is delegated to the adjoining land owner.

Likewise if the 250 yard limit from an adjoining land owner is proper for the protection of human life in creeks,

which are usually narrow, the channel being close to both shores, such limit of 250 yards is equally sufficient for such protection in the Potomac River.

### B. Conservation of Wild Fowl.

It at once becomes apparent, upon slight reflection, even to those not familiar with the sport of hunting ducks, that with duck blinds 500 yards apart, there will be more ducks decoyed within gun shot range, and therefore more shooting, and more ducks killed, than would be the case with blinds 250 yards apart, with a greatly reduced number of ducks decoyed within gun shot range; ducks become shy of the many blinds and the movement in and about the same; the very presence of the blinds close together cause this suspicious kind to avoid them. The most alert, wary, suspicious, cautious; the most easily frightened bird, is the wild duck.

**Therefore it follows—the lesser number of blinds, the more ducks decoyed, more shooting and more ducks killed: the greater number of blinds, the less number of ducks decoyed, the less shooting and the least number of ducks killed.**

### Statute is Discriminatory and Class Legislation.

Is the 250 yard distance from the division lines of property owners, in furtherance of "conservation of wild fowl", or "the protection of those hunting or shooting them," or both. It cannot be successfully contended that this provision of the law has either as its object.

*By what authority can the Legislature delegate to a resident or a non-resident riparian owner, the exercise of the Police Power of the State, over the waters and the land thereunder, the State's domain.*

If this 250 yard distance has any reasonable relation to the objects of the legislation, why are riparian owners on the creeks in Charles County exempted from this requirement, while riparian owners on creeks in Prince George's

and St. Mary's Counties, and on the Potomac River, are required to observe this 250 yard limitation.

Unless some reason can be found from this legislation for the requirement that blinds shall be 500 yards apart in the River, and not less than 250 yards from division lines of riparian owners, both requirements are arbitrary, and the classifications, having no fair and substantial relation to the object sought to be accomplished by the legislation, are unconstitutional, and the acts are class legislation, favoring the rich as against the poor; favoring the larger riparian land-owners against the less fortunate neighbor.

That the state could prohibit *to all* the right to shoot wild fowl, is not here involved. The state has seen fit to permit the enjoyment of that right, and we are only concerned with the fact that it has endeavored to regulate the subject unlawfully so as to deny, both under the State and Federal Constitutions, equal protection of the laws. Sections 41 and 46 are unconstitutional and create arbitrary and unreasonable classes, having no fair and substantial relation to the subject of the legislation—conservation of wild fowl, and protection of those hunting them.

Again, owners of blinds on Chesapeake Bay in Anne Arundel County, prior to January 1, 1927, are given perpetual enjoyment rights; while blinds located in the waters of Anne Arundel County, after said date must comply with section 40 paragraph (c).

On the question that owners of licenses in the waters of Anne Arundel County, prior to January 1, 1927, are practically given a monopoly see Hume v. Roque River Packing Co., 51 Oregon 237, where it was held that an exclusive right of fishery cannot be granted by the legislature, to a shore owner in the tide land in front of his property, for it creates a monopoly.

The laws, (Sections 40, 41, and 46) are discriminatory and are class legislation.

An owner of tributary frontage is exempted from setting his blind at least 250 yards from his neighbor's dividing line; tributary blinds can be placed 250 yards apart; while Potomac River frontage owners must set their blinds 250 yards from the dividing lines of adjoining owners, and can only enjoy the privileges of duck hunting, if they have a frontage of 500 yards plus the width of their blinds.

It cannot be successfully maintained that these various discriminatory provisions have been made the law of the State for the purpose of conservation of wild fowl or the protection of those shooting them.

If blinds in tributaries are at a safe distance as regards the public and property, when they are but 250 yards apart, then blinds in the Rivers specified and in Chesapeake Bay are at such safe distance when but 250 yards apart. If conservation of wild fowl is satisfied by that distance in the tributary streams, then that same distance between blinds in the Rivers specified and in the Chesapeake Bay, satisfies the conservation intent of the Legislature.

The constitutional guarantee of equal protection of laws, does not prevent classification, *but does require that classification shall be reasonable, not arbitrary, and that it shall rest upon distinctions having a fair and substantial relation to the object sought to be accomplished by the legislation.*

Atchison T. & S. F. R. Co. v. Vosberg, 238 U. S. 56; 59 L. ed. 1199;
Re: Day, 181 Ill. 73;
State v. Loomis, 115 Mo. 307;
State v. Leavitt, 105 Me. 76.

In Bedford Quarries Co. v. Bough, 168 Ind. 671; 14 L. R. A. (N. S.) 418; the Court said that *the classification must furnish a reason for and justify the making of the class.*

In Ex parte Martin, 157 Cal. 51, the court said:

> "Although a law is general and constitutional when it applies equally to all persons embraced in a class founded upon some natural or intrinsic or constitutional distinction, *it is not general or constitutional if it confers particular privileges or imposes peculiar disabilities or burdensome conditions, in the exercise of a common right, upon a class of persons arbitrarily selected from the general body of those who stand in precisely the same relation to the subject of the law.*"

In Harper v. Galloway, (Fla.) 51 So. 226; 26 L. R. A. (N. S.) 794: the plaintiff in error who was a resident of another County, was convicted for having violated a local game law passed by Marion County, Florida. This local game law favored residents of Marion County over the residents of other counties of the State. The Florida Supreme Court in holding the law unconstitutional, at page 798 of the decision as reported in L. R. A. (*supra*), says:

> "But when a statute designed for the protection of game, by its plain terms excludes from its benefits a portion of the residents of the State, *or imposes upon some of the residents of the State burdens not put upon other residents of the State with reference to the subject regulated, and there appear to be no real differences in conditions with reference to the regulation, to fairly justify the classification as made,* the Statute may in effect deny to residents of the State the equal protection of the laws in violation of the 14th amendment of the Federal Constitution." Citing authorities.

The general rule governing proper classification in police regulations requires that the classification *must be germane to the purpose of the law.* It must not be based upon existing circumstances only, or so constituted as to preclude additions to the number included within a class,

and the law must apply equally to each member of the class and all classifications must be based upon substantial distinctions which make one class different from another.

Maercker v. Milwaukee, 151 Wis. 324.

An exclusive right of fishery cannot be granted by the legislature to a shore owner in the tide land in front of his property, where the Constitution provides that no law shall be passed granting to any citizen any privilege which upon the same terms shall not equally belong to all citizens.

Hume v. Rogue River Packing Co., 51 Ore. 237.

The right of fishery in tidal waters is a public right common to all, and cannot be exclusive in any individual, whether he is owner of abutting upland or not.

Sutter v. Heckman, 1 Alaska, 81.
Hampton v. Columbia Canning Co., 3 Alaska, 100.

The legislature cannot, where the Constitution prohibits it from denying to any person within the jurisdiction of the state the equal protection of the laws, confer power upon the authorities of the county to protect the fish within the county for the benefit of the inhabitants of such county, and exclude residents of other counties from taking them.

State vs. Hill, (Miss.) 53 So. 411.

In Gustafson vs. State, (Tex.) 43 L. R. A. at p. 617, the Court said:

"We hold that the waters of the state, as well as all its domain of public lands, are equally open to all

> of its citizens upon the same terms and conditions, and that the attempt of the legislature to prohibit residents of the state who are not taxpayers, but who are willing to pay the license tax, from fishing in the public waters of the state, is violative of those provisions of the Constitution before mentioned."

*Viewing section 46 alone, or with the other sections, the 250 yard limit has nothing to do with conservation of game or protection of life and property, for the legislature could certainly not delegate to the caprice or whim of land-owners, its police power as trustee for all its citizens.*

*Construing all these sections together, there is but one meaning they can be given, and that is that a riparian owner must have a shore frontage equal to 500 yards, plus the width of a blind, measured in a straight line, before he can either protect a shore blind or erect a water blind.*

*The expressed intention of the legislature, contained in the statute, Sec. 46, is therefore, meaningless.*

The duck law does not guarantee River Shore owners of a frontage of less than 500 yards, the right to shoot ducks; if it did the appellant would not be involved in this litigation. He had a frontage of less than 500 yards; he obtained his license in due time (June 3, 1929) and erected his stake in due time before October 10th, 1929 (on October 4, 1929).

This stake was less than 250 yards from the adjoining owner's dividing line, and was less than 500 yards from the nearest blind. He complied with Section 40. The stake was destroyed by defendants as being unlawful.

True, Section 40 taken by itself, guarantees these rights to riparian owners, their lessees or licensees, but these rights are thereafter denied the small shore owners by Sec. 41 and 46, which endeavor to create two classes, and are unconstitutional.

## CONCLUSION.

It is requested that the Court treat this brief as one in opposition to the Motion to Dismiss or Affirm filed by the Appellees herein, as well as the brief of Appellant upon this appeal.

It is submitted that the judgment of the lower court is erroneous and should be reversed.

Respectfully submitted,

THOMAS MORRIS WAMPLER,
*In Propria Persona.*

October 1930.

## APPENDIX.

Sections 40, 41 and 46 of Article 99 of the Code of Public General Laws of Maryland, title, Water Fowl, Birds and Game, are as follows:

### Duck Blinds—Riparian Owners.

Chapter 568, Acts of 1927, Sec. 39

40. All owners of riparian rights, their lessees or licensees on the waters of this State shall, by virtue of said ownership, be first entitled to make a choice of the "set" or position in front of the property of which they are the owners of the riparian rights, lessees or licensees, for the purpose to erect, set or maintain booby, brush or stake blind or blinds, provided, that said riparian owners, their lessees or licensees shall avail themselves of said choice of localities and clearly mark the same on said waters by erecting a stake, on which shall appear the license number of each blind and the licensee's name as hereinafter provided on or before October 10th of each and every year, and said blind or blinds licensed prior to October 10th must be erected on or before November 10th and said blind or blinds licensed after November 10th must be erected on or before twenty days thereafter, except as herein provided.

### Protection of Shore Blinds.

(a) For the protection of shoreowners, their lessees or licensees, desiring to locate a blind or blinds on their shore, the purchase of a license as herein provided and the establishment of a stake on which shall be painted the license number and the name of the licensee, such stake not to exceed the lawful distance from shore and be established in the water, when said stake shall be established on or before October 10th, then said stake shall be termed as a blind as hereinafter provided.

### Blinds in Certain Waters Prohibited.

Chapter 366, Acts of 1929.

(b) And be it further provided, that no booby, brush or stake blind shall be licensed or erected in the waters of

Chester River and its tributaries within the jurisdiction of Kent County, except Grey's Inn Creek, Comegy's Bight and between a line drawn from Beaver Dam in Hail Creek, Kent County, to Stoney Bar Bluff at the mouth of Jackson's Creek in Queen Anne's County, and Drum Point in Kent County; and no booby, brush or stake blind shall be licensed or erected in the waters of the Chesapeake Bay within the jurisdiction of Kent County between the north end of Hickory Thicket and the mouth of the Chester River.

**Blinds in Anne Arundel County.**

Chapter 366, Acts of 1929.

(c) And be is further provided, that this Section shall not apply to any person who has an established licensed blind or blinds located in the waters of Anne Arundel County or in the waters of the Chesapeake Bay opposite the shore line of said county prior to January 1st, 1927, and said licensee shall have the right to renew said license on or before the first day of July of each year thereafter.

**Blinds in Certain Waters Prohibited.**

Chapter 568, Acts of 1927.

(d) And be is further provided that no booby, brush or stake blind shall be licensed or erected in the waters of Bohemia River and its tributaries, within the jurisdiction of Cecil County.

**Distance from Shore and Distance Apart.**

Chapter 366, Acts of 1929, Sec. 40.

41. It shall be lawful in or over the waters to erect, set or maintain a booby, brush or stake blind, and same shall be stationary; in which shall be built a platform for the purpose of shooting from. It shall be unlawful to erect, set or maintain any blind at a greater distance than 300 yards from the natural shore, from which same may be erected. Said blinds shall not be less than 500 yards apart, measured in a straight line; provided, however, it shall be unlawful in or over the waters of Baltimore County to erect, set or maintain any blind at a greater distance than 150 yards from the natural shore.

**Blinds on Rivers.**

(a) It shall be unlawful on any of the rivers of this State for any person to erect, set or maintain a blind at a farther distance from the shore than one-half of said river where said river is less than 600 yards in width, nor shall any person place any blind on any of the rivers across any channel where said channel runs near the center of said river.

**Blinds in Charles and Baltimore Counties.**

(b) Provided, however, that in the tributaries of the Chesapeake Bay and in the tributaries of the Potomac River in Charles County and on the waters of Baltimore County said blinds shall not be less than 250 yards apart, measured in a straight line. However, the 250 yards as provided in Paragraph A of Section 45 of Chapter 568, Acts of 1927, shall not apply to Baltimore County.

**Rights of Property Owners Bordering on Waters.**

Chapter 568, Acts of 1927, Sec. 45.

46. Any person who shall obtain a license as provided for in this Article to erect a blind and the same may thereafter be destroyed in any manner beyond the control of the owner, shall have thirty days in which to replace or restore same without losing the set which the same formerly occupied.

(a) Whenver an owner of land bordering on any waters of this State shall desire to erect a booby, brush or stake blind in front of his property, or other person to whom he shall give permission, he shall not place same within 250 yards of the dividing line of any property owned by him and the adjoining property bordering on said waters (the distance contained herein shall not apply to the waters that are tributary of the Chesapeake Bay and the Potomac River in the county of Charles, meaning a line extending out over the waters drawn direct from the dividing line of said properties at the shore line, unless with the consent of the adjoining landowner, same being for the purpose of allowing each landowner bordering on any of the waters of the State permission to avail himself of the privilege of setting, erecting or maintaining a booby, brush or stake blind in front of his property.